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Mexico: Availability and Cost of Health Care – Legal Aspects

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SUMMARY The Constitution of Mexico grants everyone the right to health protection. The health care system is comprised of the institutions that make up the social security system, private sector providers of health services, and the System of Social Protection in Health, whose operational centerpiece is the national health insurance program, Seguro Popular. The program was legislated in 2003 to provide health insurance to millions of Mexicans who were not covered by social security. Under the 2003 reform, beneficiaries of Seguro Popular must pay an annual contribution based on their socioeconomic status. Unemployment or a low income does not impede access to Seguro Popular. According to the analysis of a number of scholars, Mexico was successful in achieving universal health coverage in 2012 through Seguro Popular, which reportedly covers more than fifty million Mexicans who did not have health insurance and provides access to a package of comprehensive health care services. However, critics have challenged the statistics on the actual extent of coverage under Seguro Popular and pointed out the limited nature of its health package, which does not cover hospitalization, diagnosis, and treatment costs for many diseases. These critics have also identified other limitations in the system that adversely impact access to health care, including inefficient regional distribution of specialized health resources; limited access to health care in rural and geographically isolated areas; and the financial instability of Seguro Popular. Finally, critics argue that although the official enrollment in Seguro Popular is extensive, the enrollment numbers do not guarantee that its participants actually have access to quality health care.

I. Introduction

A. Issue

This report addresses issues presented by the Department of Justice's Executive Office for Immigration Review on the availability and costs of health care in both urban and rural areas of Mexico.

B. State Responsibility for Health Care

Mexico's responsibility for health care comes from article 4 of the Federal Constitution, which assigns a key role to the state in conducting the national health policy. On February 3, 1983, Mexico added a paragraph to article 4 that raised to a constitutional rank the right of everyone to health protection:

> Everyone has the right to health protection. The Act shall define the principles and manners for access to health services and shall establish the participation of the

> Federation and the states in matters of public health in accordance with the provisions of Article 73, section XVI of this Constitution.[1]

The state has endeavored to meet its health care responsibilities through the current national health care system, which is comprised of a number of institutions that are differentiated depending on the segments of the population they serve. As a consequence, the health care provided is fragmented and characterized by the coexistence of different types of benefits and levels of service quality. Dues and contributions of the beneficiaries vary according to the beneficiaries' financial condition and the institutions involved, which themselves are funded by different sources, such as taxes and fees.[2] This fragmentation and service variability have led to inefficiency in the operation of the system and inequities in the provision of health care services.[3]

Article 5 of the General Health Law describes the composition of the National Health System as follows:

> The National Health System consists of the departments and agencies of the Public Administration, both federal and local, and persons and entities of the social and private sectors providing health services, as well as mechanisms for coordinating activities, and aims to fulfill the right to health protection.[4]

II. Health Care Programs

A. Health Care for the Insured

The social security system offers health care services to the employed and covers approximately 47% of the population as a whole. Health services for the employed are provided through specific public hospitals and clinics.[5]

The largest institution of the social security system is the Mexican Social Security Institute (Instituto Mexicano del Seguro Social, IMSS), which was created in 1943 to provide social security to formal sector workers employed in the private sector and their families. It provides medical care and a series of economic benefits, such as pensions, disability, and life insurance.[6]

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[1] Decreto por el que se adiciona con un párrafo penúltimo el artículo 4 de la Constitución Política de los Estados Unidos Mexicanos [Decree Adding a Penultimate Paragraph to Article 4 of the Political Constitution of the United Mexican States], DIARIO OFICIAL DE LA FEDERACIÓN [D.O.], Feb. 3, 1983, https://www.scjn.gob.mx/normativa/analisis_reformas/Analisis%20Reformas/00130125.pdf (translation by author).

[2] JOSÉ CARBONELL & MIGUEL CARBONELL, EL DERECHO A LA SALUD: UNA PROPUESTA PARA MÉXICO 49 (Universidad Nacional Autónoma de México 2013).

[3] *Id*.

[4] Ley General de Salud [General Health Law] art. 5, D.O., Feb. 7, 1984, http://www.diputados.gob.mx/LeyesBiblio/pdf/142_040614.pdf (translation by author).

[5] Adela de la Torre et al., *Making the Case for Health Hardship: Examining the Mexican Health Care System in Cancellation of Removal Proceedings*, 25:93 GEO. IMMIGR. L.J. 93, 106 (2010), *available at* http://cth.ucdavis.edu/img/de%20la%20Torre_Health%20Hardship.PDF.

[6] CARBONELL & CARBONELL, *supra* note 2.

The IMSS is financed by contributions of the employees, their employers, and the federal government.[7] At the time major national health care reform was passed in 2003, the IMSS covered approximately 40% of the population.[8]

The second largest insurance agency in the social security system is the Institute of Social Security and Social Services for State Workers (Instituto de Seguridad y Servicios Sociales de los Trabajadores del Estado, ISSSTE), which was created in 1960 to cover federal government employees.[9] It covered 7% of the population at the time the health care reform was passed.[10] Other government institutions that offer health services for their employees include the Secretariat of National Defense (Secretaría de la Defensa Nacional, SEDENA) through the Institute of Social Security for the Mexican Armed Forces (Instituto de Seguridad Social para las Fuerzas Armadas Mexicanas), the Secretariat of the Navy (Secretaría de Marina, SECMAR), and the national oil company, Pemex.[11]

Health care may also be obtained via private insurance entities by those who can afford it. This private insurance market covers several million enrollees.[12] According to the results of a 2000 survey, over 30% of the population older than eighteen years of age use private health services regardless of their membership in social security because they are dissatisfied with the care they receive from public health services.[13]

B. Health Services for the Uninsured

Prior to the health care reform of 2003, about 50% of the population had no access to prepaid health insurance.[14] According to a comprehensive report published in the *Lancet*, self-employed workers, the underemployed, the unemployed, and those temporarily or permanently out of the labor market, as well as their families, had access to health services through the public assistance health care services run by the Ministry of Health, which were funded from varied budget allocations with unspecified entitlements. "Care was not comprehensive, and families paid out-

[7] *Id*. at 50.

[8] Felicia Marie Knaul & Julio Frenk, *Health Insurance in México: Achieving Universal Coverage Through Structural Reform*, 24:6 HEALTH AFF. 1467, 1468 (2005), http://content.healthaffairs.org/content/24/6/1467.full.pdf+html.

[9] CARBONELL & CARBONELL, *supra* note 2, at 50.

[10] Knaul & Frenk, *supra* note 8.

[11] de la Torre et al., *supra* note 5.

[12] *Id*.

[13] Beatriz Zurita & Teresita Ramírez, *Desempeño del Sector Privado de la Salud en México*, *in* CALEIDOSCOPIO DE LA SALUD 153 (Julio Frenk & Gustavo Nigenda eds., 2003), *available at* http://www.funsalud.org.mx/CASEsalud/caleidoscopio/10%20Desempenio.pdf.

[14] Julio Frenk et al., *Reforma Integral para Mejorar el Desempeño del Sistema de Salud en México*, 49 SALUD PÚBLICA DE MÉXICO S23, S25 (Suplemento 1, 2007), *available at* http://bvs.insp.mx/rsp/_files/File/2007/supl%201/6-REFORMA.pdf.

of-pocket, especially for basic services and medicine."[15] About 2.5 million families in the poorest segments of the population received only very basic community and preventive health services that were included in the program to fight poverty known as Opportunities (Oportunidades).[16] The health system "before 2003 was characterized by low general health spending; predominance of private, out-of-pocket spending; unfair allocation of public resources between the insured and uninsured, and among states; inequitable state contributions to health financing[;] and underinvestment in equipment and infrastructure."[17]

Motivated by these imbalances, the Mexican government promulgated its April 2003 health reform. The reform legislated the Social Protection System in Health (Sistema de Protección Social en Salud, SSPH), which offered subsidized, publicly provided health insurance to more than fifty million Mexicans who were not covered by social security. The operational program of the new system is the national health insurance program, Seguro Popular,[18] which offers universal access to health care—the right to health protection recognized in the Mexican Constitution in 1983 but still denied to millions at the time of the reform.[19] The reform came into force on January 1, 2004, with the goal of achieving universal access to health care by 2010.[20] Among the many rights the law provides to the beneficiaries of Seguro Popular are the right to equal access to health care, comprehensive health services, emergency medical care, and appropriate medication for the diagnosis and treatment of diseases.[21] Moreover, the law mandates that the federal executive provide highly specialized health services through the Secretariat of Health.[22]

Like the IMSS and ISSSTE, the financing of Seguro Popular is tripartite, with the federal government providing an annual fixed social contribution (*cuota social*) for each beneficiary family equivalent to 15% of the mandatory daily minimum wage for the Federal District.[23] However, in the case of Seguro Popular, since there is no employer contribution, the federal and state governments provide a solidarity contribution per beneficiary family according to specific criteria. The federal government's contribution must be at least 1.5 times the amount of the *cuota social*. The law mandates compensatory increases of this contribution based on the profile of health needs, the state economic contribution, and the performance of the states' health

[15] Felicia Marie Knaul et al., *The Quest for Universal Health Coverage: Achieving Social Protection for All in Mexico*, 380 LANCET 1259, 1261 (Oct. 6, 2012, online version published Aug. 16, 2012), http://download.thelancet.com/flatcontentassets/pdfs/S014067361261 068X.pdf.

[16] Frenk et al., *supra* note 14.

[17] Knaul et al., *supra* note 15.

[18] Knaul & Frenk, *supra* note 8.

[19] Knaul et al., *supra* note 15, at 1.

[20] Decreto por el que se Reforma y Adiciona la Ley General de Salud [Decree Amending and Supplementing the General Health Law] transitory arts. 1 & 8, D.O., May 15, 2003, http://www.salud.df.gob.mx/ssdf/seguro_popular/index/pdf/01.pdf.

[21] *Id*. arts. 77 Bis 36 & 77 Bis 37 §§ I, IV & XII.

[22] *Id*. art. 77 Bis 5 § I.

[23] *Id*. art. 77 Bis 12.

services. The minimum state contribution per family is equivalent to half the *cuota social*.[24] The beneficiaries' contribution is prepaid, annual, and progressive; it is determined based on the socioeconomic status of each family.[25] The inability of a family to cover the contribution does not preclude it from joining Seguro Popular and enjoying its benefits.[26] "Families in the two lowest income deciles do not contribute in monetary terms but are required to adhere to participation rules associated with health promotion."[27]

C. Enrollment in Seguro Popular

The goal of achieving universal access to health care by 2010 proved not possible, and the timeline was extended to December 2011.[28] According to the *Lancet* report previously cited, by 2010, 59.2 million Mexicans had health insurance through social security; Seguro Popular had enrolled 43.5 million, and enrolled an additional 8.3 million in 2011. Moreover, the Secretariat of Health's 2012 budget was sufficient to ensure that that those who had not been covered by social security could be voluntarily enrolled in Seguro Popular.[29]

The information on whether Mexico has now achieved universal health coverage is inconsistent. According to an announcement by former President Felipe Calderón during the inauguration of an ISSSTE hospital in the state of Coahuila on November 26, 2012,[30] as well as figures reported by health institutions in the same year, Mexico has achieved health protection coverage for virtually the entire population of the country.[31] On the other hand, according to information reported in the National Health and Nutrition Survey 2012 (Encuesta Nacional de Salud y Nutrición 2012, ENSANUT 2012), about thirty million Mexicans, or 25.43% of the population, had no health protection at the time the survey was conducted.[32] Some have attributed this discrepancy partly to the ignorance of many Mexicans that they and their families are entitled to benefits under Seguro Popular. Similarly, IMSS beneficiaries who lose their jobs may not have sufficient information about their right to enroll in Seguro Popular.[33] According to an article in the *Dartmouth Business Journal*, fraud, corruption, and inefficiency must be partly considered as reasons for the discrepancy. For example, states receive federal funds in proportion to the

[24] *Id.* art. 77 Bis 13.

[25] *Id.* art. 77 Bis 21.

[26] *Id.* arts. 77 Bis 21 & 77 Bis 26.

[27] Knaul & Frenk, *supra* note 8, at 1471.

[28] Decreto por el que se Reforman los Artículos 77 Bis 12 and 77 Bis 13 de la Ley General de Salud [Decree Amending Articles 77 Bis 12 and 77 Bis 13 of the General Health Law], transitory art. 3, D.O., Dec. 30, 2009.

[29] Knaul et al., *supra* note 15, at 9.

[30] Georgina Olson, *Cumplimos en Materia de Salud: Felipe Calderón*, EXCELSIOR (Nov. 26, 2012), http://www.excelsior.com.mx/2012/11/26/nacional/871722.

[31] INSTITUTO NACIONAL DE SALUD PÚBLICA, ENCUESTA NACIONAL DE SALUD Y NUTRICIÓN 2012: RESULTADOS NACIONALES 33 (Cuernavaca, México 2012), http://ensanut.insp.mx/informes/ENSANUT2012ResultadosNacionales.pdf.

[32] *Id.* at 33–34.

[33] *Id.* at 34.

number of Seguro Popular affiliates enrolled without being held accountable for the manner in which this money is spent, so large but fraudulent numbers of enrollees may be claimed merely to increase the amounts of funds received.[34]

Contradicting the assertion made by President Calderón, current President Enrique Peña Nieto stated on World Health Day (April 7, 2012), when running for the presidency, that in Mexico there were at least 35.8 million Mexicans who had no access to health services, and half of the population did not have social security. He added that "[o]n World Health Day, I reinforce my commitment that this right will cease to be only on paper and will become a reality. My commitment is to the health and welfare of Mexicans."[35]

D. Health Benefits Under Seguro Popular

The Universal Catalog of Health Services (Catálogo Universal de Servicios de Salud, CAUSES) contains all the health services to which the beneficiaries of Seguro Popular are entitled. CAUSES provides a list of comprehensive health actions, called "interventions," that consists of more than fifteen hundred diseases and health activities to be covered by Seguro Popular.[36] According to CAUSES, Seguro Popular offers six types of health interventions: public health, outpatient care, dental care, emergency care, hospitalization, and general surgery.[37] Currently, Seguro Popular cover 284 health interventions for the "first and second levels of medical care."[38] In addition, CAUSES provides a package of specialized care financed through the Fund for Protection against Catastrophic Expenditures,[39] and a package of health care services for children and newborns covered by the Health Insurance for a New Generation program.[40]

Critics have argued that "universal coverage" is a deceptive term that means everyone in the country is merely *entitled* to medical service, because Seguro Popular is a package of services that covers neither all the diseases commonly suffered by Mexicans, nor all of the diagnostic studies, medications, or surgeries that Mexicans need. Thus, coverage under the program is

[34] Samantha Sherman, *Seguro Un-Popular: Three Critiques of Mexico's 2003 Health Reform*, DARTMOUTH BUSINESS JOURNAL, http://dartmouthbusinessjournal.com/the-global-health-policy-project/seguro-un-popular-three-critiques-of-mexico%E2%80%99s-2003-health-reform/ (last visited June 24, 2014).

[35] Ariadna García, *Enrique Peña Nieto Ofrece Salud para Todos*, EL UNIVERSAL – RED POLÍTICA (Apr. 8, 2012), http://www.redpolitica.mx/ruta-electoral/enrique-pena-nieto-ofrece-salud-para-todos (translation by author).

[36] *Catálogo Universal de Servicos de Salud (CAUSES) 2012*, GOBIERNO DEL ESTADO DE OAXACA, http://www.seguropopularoaxaca. gob.mx/seguro_causes.html.

[37] COMISIÓN NACIONAL DE PROTECCIÓN SOCIAL EN SALUD / *SEGURO POPULAR*, CATÁLOGO UNIVERSAL DE SERVICIOS DE SALUD (CAUSES) 2012 at 19, http://seguropopular.tamaulipas.gob.mx/wp-content/uploads/2013/06/CAUSES.pdf.

[38] *Id*. at 10.

[39] *Id*. at 466.

[40] *Id*. at 469.

actually limited, and a person who has a disease that does not fall within the scope of the health package must cover the entire cost of his or her medical needs.[41]

Moreover, although the covered package of essential services expanded from 91 interventions in 2004 to 284 in 2012, "covering treatment for more than 95% of [cases] in ambulatory units and general hospitals,"[42] critics allege that most of the diseases that are covered require only simple, low-cost treatments. For example, a person with chickenpox is entitled to two drugs and a medical consultation. But in the rare event that the patient has a complicated form of the same disease, and complex, specialized care is needed, it is the patient who must cover hospitalization, diagnosis, and treatment costs, since Seguro Popular does not cover them. Another example is that ischemic heart disease is not treated in its chronic condition, but only in acute emergencies.[43] Critics say that while medicine has identified more than one hundred types of cancer, Seguro Popular covers only six: breast cancer, cervical cancer, prostate cancer, testicular cancer, non-Hodgkin's lymphoma, and childhood leukemia.[44]

E. Regional Availability of Health Resources

Legal publications characterize the inefficient regional distribution of specialized health resources as other limitations in the system that adversely impact access to health care. According to an article in the *Georgetown Immigration Law Journal*, only twenty-three states out of thirty-one provide specialized treatment for breast cancer through Seguro Popular. Many of the current treatment centers do not have the necessary equipment to provide optimal care. The quality of the treatment provided by the network of cancer centers under Seguro Popular is affected by their shortage of oncologists. Owing to the geographic centralization of specialty services in the country, patients who need cancer treatment must travel to the capitals of the states where these treatment centers are located. The costs of transportation, lodging, and meals incurred in seeking and acquiring treatment may constitute a hardship for an individual and his or her family, especially if he or she is unemployed.[45] Similar health care limitations are faced by the inhabitants of states with predominantly rural areas, among them Zacatecas, Michoacán, and Durango, where "access to health care is seriously limited, chiefly by the geographic isolation and the poverty of these states."[46]

[41] José Guerrero Cantera et al., *El Seguro Popular, la Farsa de la Salud*, CONSIDERACIONES No. 12 (Mar. 2012), http://revistaconsideraciones.com/2012/03/07/el-seguro-popular-la-farsa-de-la-salud-la-privatizacion-paulatina-de-los-servicios-medicos/ (emphasis by author).

[42] Knaul et al., *supra* note 15, at 9.

[43] Guerrero Cantera et al., *supra* note 41.

[44] *Fallece en Cinco Años 70% de Mexicanos con Cáncer*, DIARIO CRÍTICA (Apr. 26, 2012), http://www.diariocritica.org/nota.php?id=18421.

[45] de la Torre et al., *supra* note 5, at 111.

[46] *Id*. at 109.

F. Funding Discrepancies

Another criticism of Seguro Popular is its financial instability, which is created by insufficient contributions from its beneficiaries and the states. Ninety-seven percent of the families enrolled in Seguro Popular are not required to pay because they are classified as poor. In addition, the states reportedly have failed to provide their required contribution to fund Seguro Popular.[47]

According to a publication by two Mexican scholars, the widely varying investment of Mexican states in health protection causes pronounced discrepancies in access to health care. For instance, while Oaxaca invests more than 5% of its GDP in health care, and Nayarit, Zacatecas, Tlaxcala, and Baja California Sur invest more than 4%, Campeche only invests 0.7%. Nuevo León's investment does not exceed 2%, while Querétaro, Coahuila, and Quintana Roo's investments barely exceed 2%, all far below the national average of 2.8% of GDP. These investments include all public health spending—that is, the spending of the federal government, the state governments, and the insured population.[48]

With respect to expenditures of state governments in health, again, the disparity between the five states that invest the most per capita on health care and those that spend the least is significant. While the government of Tabasco invests more than MXN1,000 (approximately US$77) on the health of each of its inhabitants, the government of Colima spends only MXN25 (approximately US$2). The national average is MXN311 (approximately US$24).[49]

The five most laggard states—Colima, Chihuahua, Michoacán, Guerrero, and Chiapas—do not exceed MXN70 (approximately US$5) per capita in health expenditures. By contrast, the leading states—Tabasco, Mexico, Campeche, the Federal District, and Baja California—exceed MXN430 (approximately US$33) per capita in health expenditures.[50]

Beyond financial issues, the conditions of access to health protection diverge markedly between different states of the country. Data from the Census of Population and Housing (Censo de Población y Vivienda) 2010 provided the percentages of people who had some form of public health insurance. The five states with the highest percentage of insured—Colima, Aguascalientes, Nuevo León, Campeche, and Coahuila—exceeded 76%, while the national average was about 65% of the insured population. In the most laggard states—Puebla, Guerrero, Michoacán, Oaxaca, and Chiapas—less than six out of ten people had access to these services in 2010 before Seguro Popular was formally implemented.[51]

[47] *Id*. 108–09.

[48] CARBONELL & CARBONELL, *supra* note 2, at 71–72.

[49] *Id*. at 73–74. Note that this source does not specify the time frame for these statistics.

[50] *Id*. at 74.

[51] *Id*. at 74–75 (latest data available).

III. Conclusion

Mexico's current statutory framework guarantees universal access to health care for Mexicans. However, the research for this report, necessarily limited in its scope, shows that the practical implementation of this legal framework is inconclusive. In effect, many reports are contradictory with respect to whether or not universal access to health care has been achieved in Mexico. Moreover, available information indicates that access to health care varies throughout the country according to location, type of coverage, and other factors.